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In re Application of
JUAN ELIZALDE BERTAND
Application No.: 09/868,653
PCT No.: PCT/ES99/00406
Int. Filing Date: 28 December 1999
Priority Date: 30 December 1998
Attorney's Docket No.: 01118
For: A METHOD OF INTERCONNECTING THE
FRONT AND REAR WHEELS IN TWO-WHEELED
VEHICLES, AND A VEHICLE PRODUCED IN
ACCORDANCE WITH THE METHOD

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: DECISION ON PETITION
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: UNDER 37 CFR 1.181
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This is in response to applicant's "Request to Withdraw Holding of Abandonment" based on a failure to receive an office action, treated as a petition under 37 CFR 1.181 and filed in the United States Patent and Trademark Office (USPTO) on 01 December 2003 alleging that applicant did not receive the Notification of Missing Requirements mailed on 03 August 2001.

BACKGROUND

A review of the application file reveals that the NOTIFICATION OF MISSING REQUIREMENTS was mailed by the USPTO on 03 August 2001. The notification indicated that an oath or declaration and surcharge had not been received. Applicant was given two months to respond to the Notification or until 03 October 2001, with extensions of time (up to 5 months) available under 37 CFR 1.135(a). No response to the Notification of Missing Requirements was received, and thus, the application was held to be **ABANDONED** as of midnight on 03 March 2002.

On 14 November 2003, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to applicant.

DISCUSSION

In order to establish that papers were not received, a petition under 37 CFR 1.181 with a proper showing is required. As set forth in the Official Gazette at 1156 OG 53, the petition must include the following: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket records must also be referenced in practitioner's statement). No petition fee is required.

Counsel for applicant states that he did not receive the Notification of Missing Requirements mailed on 03 August 2001 and that a search of the file jacket and docket records

indicates that the Office action was not received. Counsel also submitted a "computer printout of the docket of the law firm of the undersigned attorney showing actions due on October 3, 2001, and no record of the referenced action is found." Counsel also supplied "a copy of the face of the file of the above application, where such an action would have been recorded."

Attorney for applicant proffers that the mailing address used by the USPTO on the Notification of Missing Requirements and Notification of Abandonment (612 Crystal Davis Highway, Arlington, VA 22201-3417) was in error and that this is the cause of his nonreceipt of the Notification of Missing Requirements. Counsel states that the correct address (612 Crystal Square 4, 1745 Jefferson Davis Highway, Arlington, VA 22202-3417) is the address listed on the transmittal letter for entry in the U.S. national stage filed on 02 July 2001.

A review of the application file and the USPTO records indicates that counsel listed the "612 Crystal Square 4, 1745 Jefferson Davis Highway, Arlington, VA 22202-3417" address on the transmittal letter for this application. However, the USPTO PALM record incorrectly lists "612 Crystal Davis Highway" as the correspondence address.

The Notification of Missing Requirements mailed on 03 August 2001 and Notification of Abandonment mailed on 14 November 2003 will be vacated.

Applicant filed a "Change of Address" on 01 December 2003. The new address will be noted in the USPTO records.

CONCLUSION

For the reasons presented above, the Petition to withdraw the holding of abandonment under 37 CFR 1.181 is **GRANTED**.

The 03 August 2001 Notification of Missing Requirements and the 14 November 2003 Notification of Abandonment (Form PCT/DO/EO/909) are hereby **VACATED**.

Applicants' correspondence address will be corrected in the USPTO records to reflect the address change filed on 01 December 2003.

The application will be forwarded to the United States Designated/Elected Office for further processing. The declaration, in compliance with 37 CFR 1.497(a) and (b), submitted on 01 December 2003, and the \$65 surcharge for filing the oath or declaration after the thirty month period have been filed. The 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date is **01 December 2003**.



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